

IA No.11/22
CT Case No. 13/22
ECIR No: KLZO/41/2020
U/S : 3 & 4 of PMLA

Directorate of Enforcement v. Mohd. Enamul Haque

22.10.2022

File is taken up on the application of the ED seeking remand of accused Sehegal Hossain.

At 12.19 p.m.

Present: Sh. Nitish Rana, SPP for ED along with Adv. Ashish Kashyap, Adv. Deepak Nagar and Sh. Pankaj Kumar, Assistant Director.

At this stage, accused Sehegal Hossain has been produced in this Court in terms of the order dated 17.10.2022, passed on the application of the prosecution/ED filed u/s 267 Cr. P.C by SI Sushil Kumar Majhi, Asansol Durgapur Police Commissionerate, West Bengal along with one officer (ASI) and 05 Constables.

The Ld. SPP appearing for ED has filed an application seeking PC remand of the accused. Copy of the order dated 20.10.2022, passed by the Hon'ble High Court in respect of Writ Petition Crl. 2465/2022 Crl. M.A 21499/2022 (STAY) & Crl. M.A 21500/2022 (EXEM) CRL. M.A. 21501/2022 (EXEM) has been placed before the undersigned by the Ahlmad of this Court.

At this point of time, no Counsel for accused is present. Hence he is afforded an opportunity/passover till 2.00 p.m to contact with his Counsel. In the absence thereof, the Legal Aid Counsel be

called and advance intimation to that effect to the Remand Advocate **(Ms. Sunita Rani Sharma, Mob. No. 9868906547)** who might have been assigned the duty of the like nature; to be present in the Court at 2.00 p.m.

(Raghubir Singh)
Special Judge (PC Act) (CBI)-18,
Rouse Avenue District Courts,
New Delhi/22.10.2022

At 3.00 p.m.
File is taken up again.

Present: Sh. Nitish Rana, SPP for ED along with Adv. Ashish Kashyap, Adv. Deepak Nagar and Sh. Pankaj Kumar, Assistant Director.
Sh. Kshitij Kumar, Ld. Counsel for accused Sehegal Hossain has filed fresh vakalatnama on behalf of the accused.
Accused Sehegal Hossain produced by the West Bengal Police in compliance of the production warrants issued vide order dated 17.10.2022.

Arguments on the application of the ED, seeking PC remand of accused Sehegal Hossain heard.

In the application in hand it is prayed that 14 days PC of the accused be permitted for the proper investigation of the PMLA case. The application was opposed by the Ld. Counsel for the accused.

In the given case, the ED has already filed the Complaint as well as Supplementary Complaint qua 12 accused persons (06 each

in Complaint and Supplementary Complaint). In the application in hand, it is reflected that in respect of the Scheduled Offence for the offences u/s 109/120-B/420 IPC R/w Section 7, 9, 11,12, 13(2) R/w Sec. 13 (1) (b) of the PC Act, the case proceedings of the CBI case are pending there at Asansol West Bengal. It was in connection with the said case proceedings, that the accused has been running into JC and has been produced before this Court in compliance of the production warrants issued in the name of concerned Jail Superintendent.

The accused namely Sehegal Hossain produced before the Court is a Constable in West Bengal Police, who was deputed as Personal Security Guard to a politician namely Anubrata Mondal and this accused allegedly used to collect illegal gratification from the kingpin (another accused in the present case Sh. Enamul Haque as well as Sh. S.K. Abdul Latif) on behalf of the afore-named politician for protection and patronage in carrying out the illegal activities of cattle smuggling through Indo Bangladesh Border. This accused had been arrested by the CBI as on 09.06.2022 and since then he has been running into JC in connection with the said CBI case vide RC No. 0102020A0019 dated 21.09.2020.

Admittedly, this accused had been formally taken into custody in connection with the present PMLA cases while interrogating him in the West Bengal Jail as on 07.10.2022 in terms of the order of the CBI Court, passed on the application of the ED seeking permission for formal interrogation in jail; of this accused.

However, thereafter, another application of the ED seeking issuance of production warrants (for being produced before this Court) and seeking transit remand moved before the Ld. Duty Judge there at Asansol stood dismissed and the Revision against it filed by the ED before the Calcutta High Court also stood dismissed vide order dated 11.10.2022. It is the argument on behalf of the ED that the period of first 15 days for the purpose of seeking police remand is to be reckoned from the date of accused being actually produced before the Court of Jurisdiction in respect of the PMLA case i.e. the Court of the undersigned and not on the date of the formal arrest of the accused while already in JC in connection with the Scheduled Offence. For this purpose they have place reliance upon the very order passed on the Revision Petition by the Hon'ble Calcutta High Court i.e. order dated 11.10.2022 and case law titled as 'State of West Bengal Vs. Dinesh Dalmia (2007) 5SCC 773' which has also been referred to in the order dated 11.10.2022 by the Hon'ble Calcutta High Court.

Ordinarily, it would not have been open to the Court not to construe the custody period w.e.f the date of formal custody i.e. 07.10.2022, however, in the given context, the material before undersigned impels to reckon it from this day i.e. the day when the accused has in fact been produced before this Court for the very first time from the West Bengal Jail (where he is in JC in CBI case/Scheduled Offence) in connection with the present case proceedings. The reason for doing so are very much apparent and are based upon the very observations given by the Hon'ble Calcutta High Court vide Revision order dated 11.10.2022 as mentioned here-

in-above. In the said order, it has been clearly observed by the said Hon'ble High Court that -

“----- as the production warrant was to be issued by the Court at Delhi which is in seisin of the merits of the case”. Page No.7 of the said order dated 11.10.2022.

“----- that since the accused has already been shown arrested on 07.10.2022, it may be difficult for interrogating the accused in police custody in view of the first 14 days running out of time. The issue has been settled by the Hon'ble Supreme Court in State of West Bengal Vs. Dinesh Dalmia reported in (2007) 5SCC 773 wherein Hon'ble Supreme Court was pleased to hold that the date for police custody would be reckoned/counted from the day when the accused is produced before the jurisdictional Court.” Page No. 7 & 8.

Since the afore-observations given by the Hon'ble Calcutta High Court are in connection with the present case itself and hence this Court is of the opinion that the observations so given are having value more than merely the persuasive value and are in a way binding upon this Court as the High Courts are higher in hierarchy. Moreover, there are ample reasons to accept the request for police custody remand in the light of the narration of the very application in

hand as well as the Complaint/Supplementary Complaint already filed in the Court. Accordingly, the PC remand of accused Sehegal Hossain is granted for the period upto 28th of this month, on which date, the accused shall be produced before the Court. The accused be medically examined as per rules as on this day as well as on every subsequent occasion on each day of PC i.e. once within every 24 hours during PC period. The accused shall also be provided the access of his Counsel in terms of the order of the Hon'ble High Court of Delhi, passed as on October 20 of this year in respect of the CrI. Writ Petition under Article 226 of our Constitution titled as 'Sehegal Hossain Vs. ED', the copy of which is admittedly available with both the parties. With these observations, the application of the ED stands disposed of as allowed as above.

(Raghubir Singh)
Special Judge (PC Act) (CBI)-18,
Rouse Avenue District Courts,
New Delhi/22.10.2022